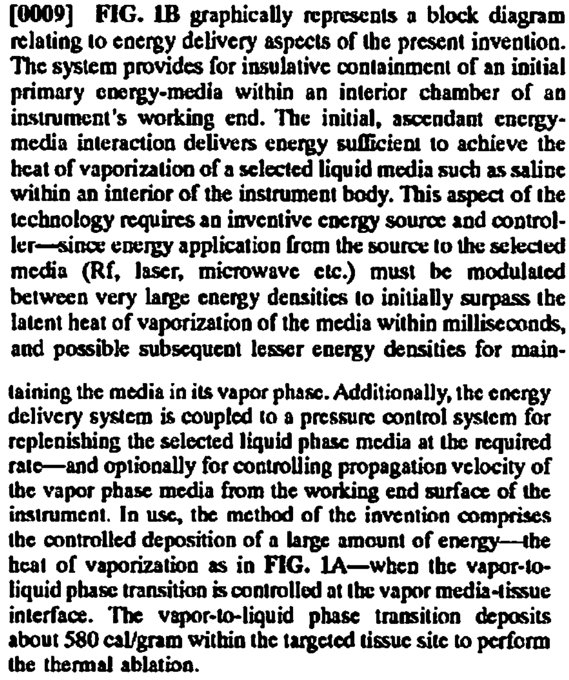
REMARKS

Claims 1-2, 4-7, 22, 27-28, and 30-31 were pending in the present application. Claims 30 and 31 are amended. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claim 1 is amended to correct a typographical error.

Support for the amendments to claim 30 and 31 is found in paragraph [0009] of the application. Applicant copies the relevant paragraph below for convenience:



> **[0009]** **FIG. 1B** graphically represents a block diagram relating to energy delivery aspects of the present invention. The system provides for insulative containment of an initial primary energy-media within an interior chamber of an instrument's working end. The initial, ascendant energy-media interaction delivers energy sufficient to achieve the heat of vaporization of a selected liquid media such as saline within an interior of the instrument body. This aspect of the technology requires an inventive energy source and controller—since energy application from the source to the selected media (Rf, laser, microwave etc.) must be modulated between very large energy densities to initially surpass the latent heat of vaporization of the media within milliseconds, and possible subsequent lesser energy densities for maintaining the media in its vapor phase. Additionally, the energy delivery system is coupled to a pressure control system for replenishing the selected liquid phase media at the required rate—and optionally for controlling propagation velocity of the vapor phase media from the working end surface of the instrument. In use, the method of the invention comprises the controlled deposition of a large amount of energy—the heat of vaporization as in **FIG. 1A**—when the vapor-to-liquid phase transition is controlled at the vapor media-tissue interface. The vapor-to-liquid phase transition deposits about 580 cal/gram within the targeted tissue site to perform the thermal ablation.

Applicant believes that no new matter has been added.

Election/Restrictions

Applicant acknowledges that claims 18-20 and 29 are withdrawn as being directed towards a non-elected embodiment.

Rejections under 35 U.S.C. § 102(b)

Claim 6 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 depended from canceled claim 3. Applicant amended claim 6 to depend from claim 1 and believes this rejection is addressed.

Rejections under 35 U.S.C. § 102(b)

Claims 30 and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stone (5,964,752). Applicant disagrees. However, to expedite prosecution of the subject application, applicant amends claim 30 and 31 as noted above.

Applicant is unable to find any teaching or suggestion in Stone of either claims 30 or 31 as amended.

Claim 30 recites: applying a first energy density to a fluid media when contained within a device such that the fluid media increases in volume causing a vapor media and subsequently providing a second energy density being lesser than the first energy density to maintain the vapor media; and expelling the vapor media from the device causing the vapor media to propagate extracellularly in tissue and allow the vapor media to undergo a vapor-to liquid phase state change and release thermal energy in the tissue.

Claim 31 recites: A surgical thermally-mediated therapy for treating tissue comprising causing a controlled vapor-to-liquid phase state change of a selected media in a targeted tissue by modulating energy to apply a first amount of energy to the selected media when contained within an instrument such that the selected media increases in volume and transforms into a vapor media, and subsequently applying a second amount of energy being lesser than the first amount to maintain the vapor media; and controlling propagation of the vapor media using a pressure control system coupled to the instrument to cause pressurized ejection of the selected media from the instrument at a sufficiently high velocity to penetrate the targeted tissue and propagate within extracellular spaces of the targeted tissue to create a lesion in the targeted tissue.

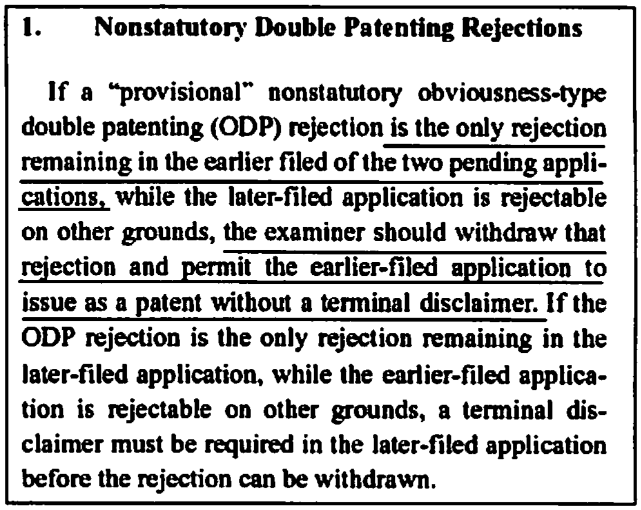
In view of these amendments, applicant requests the withdrawal of this rejection.

Double Patenting

Claims 1, 2, 4-7, 22-24, 27, 28, 30 and 31 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of copending Application No. 11/244,329.

Claims 1, 2, 4-7, 22-24, 27, 28, 30 and 31 were also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of copending Application No. 11/329,381.

Without commenting on the merits of this rejection, applicant notes that MPEP §804 (page 800-17 of the MPEP) provides:



> **1. Nonstatutory Double Patenting Rejections**
>
> **If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.**

Accordingly, applicant notes that application no. 11/244,329 was filed on October 5, 2005 and application no. 11/329,381 was filed on January 10, 2006. The subject application was filed on October 7, 2003 and is the earlier filed application. Per the MPEP, applicant requests that these rejections are withdrawn and the subject application is allowed to issue as a patent without a terminal disclaimer over the 11/244,329 and the 11/329,381 applications.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **TSMTNT00100**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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